

EARNEST B. COLLINS
Claimant

SIMON R.O. CORPORATION
Respondent

**CIGNA PROPERTY & CASUALTY
INSURANCE COMPANY**
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

Claimant appeared by and through his attorney Robert G. Scott of Overland Park, Kansas. Respondent and its insurance carrier appeared by and through their attorney Gary R. Terrill of Overland Park, Kansas. The Kansas Workers Compensation Fund appeared not, having reached an agreement with respondent regarding the liability of the Fund. There were no other appearances.

RECORD AND STIPULATIONS

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant sustained personal injury by accident on January 2, 1992 in Johnson County, Kansas.
- (2) Whether claimant's personal injury by accident arose out of and in the course of his employment.
- (3) Whether claimant is entitled to unauthorized medical compensation.
- (4) Whether claimant is entitled to vocational rehabilitation benefits.
- (5) What, if any, is the nature and extent of claimant's injury and/or disability?
- (6) What, if any, is the compensation due claimant for this injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein and, in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The findings of fact and conclusions of law contained in the Award of the Administrative Law Judge are set out in some detail and it is not necessary to repeat those herein.

Claimant alleged accidental injury on or about January 2, 1992 while pulling wire for respondent. Respondent contends claimant's injury did not arise out of and in the course of his employment as, at the specific moment of injury, he was not pulling wire, but instead was rotating his body in order to grab hold of the wire. Respondent argues Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980) is controlling in this instance. In Martin, claimant was exiting his pickup truck in the employee parking lot before coming to work when he felt a sudden onset of pain in his back. Respondent contends that claimant, in rotating his body back to grasp the wire, was not actively employed in the furtherance of the respondent's business at the exact instance the injury occurred. Respondent further argues claimant had a long history of back problems with multiple prior injuries and multiple intervening injuries subsequent to claimant's alleged injury with respondent. The Administrative Law Judge, in awarding claimant a work disability, found claimant had suffered accidental injury arising out of and in the course of his employment on January 2, 1992 while in the employ of respondent. The Appeals Board, in reviewing Martin, rejects respondent's contention that Martin should be controlling in this instance. The facts in Martin are dissimilar to the facts of this case. Here claimant was actually involved in work, with the respondent's only contention being that claimant was not actively pulling on the wire at the time the injury occurred. This argument by respondent is rejected as a misinterpretation of the Martin analysis. The Appeals Board, in reviewing the findings of fact and conclusions of law contained in the Award, adopts in toto the opinion of the

Administrative Law Judge as though specifically set forth herein and awards claimant a 17.75 percent permanent partial disability to the body as a whole. The Appeals Board has, in the Award, adjusted the temporary total disability rate to coincide with the stipulated adjustment of the average weekly wage on January 1, 1993 from \$336.88 to \$486.88. This does change the total award amount.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that an award of compensation is hereby made in favor of claimant, Earnest B. Collins, and against the respondent, Simon R.O. Corporation and its insurance carrier, CIGNA Property & Casualty Insurance Company, and the Kansas Workers Compensation Fund, for an accidental injury which occurred on January 2, 1992, for 51.86 weeks temporary total disability compensation at the weekly rate of \$224.60 totaling \$11,647.76, followed thereafter by 20.57 weeks temporary total disability compensation at the weekly rate of \$289.00 totaling \$5,944.73, followed thereafter by 342.57 weeks permanent partial disability compensation at the rate of \$57.62 per week for a 17.75% permanent partial disability to the body as a whole in the sum of \$19,738.88, for a total award of \$37,331.37.

As of January 17, 1996, claimant is due and owing 51.86 weeks temporary total disability compensation at the rate of \$224.60 per week in the sum of \$11,647.76, followed by 20.57 weeks temporary total disability compensation at the weekly rate of \$289.00 totaling \$5,944.73 followed thereafter by 138.43 weeks permanent partial general body disability at the rate of \$57.62 in the sum of \$7,976.34, for a total of \$25,568.83 which is due and owing in one lump sum minus any amounts previously paid. Thereafter claimant is entitled to 204.14 weeks permanent partial general body disability at the rate of \$57.62 per week in the sum of \$11,762.54 until fully paid or until further order of the Administrative Law Judge.

Claimant is further awarded up to \$350.00 unauthorized medical allowance upon presentation of an itemization verifying same.

Claimant is further denied vocational rehabilitation benefits at this time. However, claimant would be entitled to pursue those benefits though a preliminary hearing before the Administrative Law Judge if, in the future, claimant elects to do so.

The respondent is entitled to reimbursement from the Kansas Workers Compensation Fund for 50 percent of all compensation benefits awarded herein, including but not limited to all permanent and temporary benefits, medical and hospital expenses, and any expenses paid by the respondent/insurance carrier.

Claimant's contract of employment with his attorney, insofar as it is not in contravention of K.S.A. 44-536, shall be and is herein approved.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are assessed 50 percent against the respondent and its insurance carrier and 50 percent against the Kansas Workers Compensation Fund as follows:

Hostetler & Associates, Inc.
Gene Dolginoff Associates, Ltd.

\$ 902.40
\$1,007.45

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert G. Scott, Overland Park, KS
 Gary R. Terrill, Overland Park, KS
 Fred J. Logan Jr., Prairie Village, KS
 Alvin E. Witwer, Administrative Law Judge
 Philip S. Harness, Director